

Message Text

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FM AMEMBASSY BONN
TO SECSTATE WASHDC 7372
USMISSION USBERLIN
INFO AMEMBASSY LONDON
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C O N F I D E N T I A L SECTION 01 OF 07 BONN 06162

LIMDIS

E.O. 11652: XGDS 1
TAGS: PORS, PGOV, BQG, AKB
SUBJECT: PRESENCE OF BGS IN BERLIN

REFS: (A) USBER 307
(B) BONN 1478
(C) 77 USBER 3230
(D) 75 BONN 4290
(E) 75 STATE 78928
(F) 75 BONN 5137
(G) 75 BONN 5438
(H) 75 BONN 5837

SUMMARY: AT A MARCH 29 MEETING OF THE ALLIED BONN
GROUP REPS ON THE SUBJECT OF WHETHER, AND UNDER WHAT
CIRCUMSTANCES, THE ALLIES WOULD AGREE TO A FUTURE FRG
REQUEST FOR THE USE OF BUNDESGRENZSCHUTZ (FEDERAL
BORDER POLICE; BGS) PERSONNEL IN BERLIN, THE UK REP PUT
FORTH AN APPROACH RECOMMENDED BY THE FCO. THIS APPROACH
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WOULD ALLOW THE SECONDMENT OF A SMALL NUMBER OF BGS
PERSONNEL TO THE BERLIN POLICE FOR PURPOSES OF SIGNAL
TRACING, SERVING AS ADVISERS IN THE EVENT OF RECAPTURE
OF A HIJACKED AIRCRAFT, ETC. HOWEVER, THE FCO CONSIDERS
THAT THE WHOLESALE USE OF THE CRACK BGS ANTI-TERRORIST
UNIT (GSG-9), WHICH WAS SUCCESSFULLY EMPLOYED IN THE
MOGADISCIO RAID, WOULD BE A "FLAGRANT VIOLATION" OF THE

DEMILITARIZED STATUS OF BERLIN.

THE APPROACH SUGGESTED BY THE FCO CLOSELY FOLLOWS THE ONE WHICH HAD BEEN AGREED BY THE BONN GROUP IN 1975 FOR THE USE OF BGS PERSONNEL FOR SIGNAL TRACING. IT WAS APPROVED AT THAT TIME BY LONDON AND WASHINGTON BUT NO FINAL DECISION WAS MADE BECAUSE THE FRG DID NOT FORMALLY REQUEST THAT BGS PERSONNEL BE ALLOWED TO RETURN TO BERLIN AFTER THE ALLIES HAD ORDERED THEM TO LEAVE.

WE FIND THE PROPOSAL A PRAGMATIC SOLUTION TO WHAT COULD BE A SERIOUS PROBLEM AND SUPPORT IT. HOWEVER, WE ARE LESS THAN FULLY CONVINCED BY THE UK RATIONALE FOR SAYING THAT A SMALL NUMBER OF BGS PERSONNEL WOULD BE LEGAL BUT A LARGER NUMBER WOULD NOT. IN ORDER FOR THE ALLIES TO HAVE THE GREATEST POSSIBLE FLEXIBILITY IN AN EMERGENCY, WE WOULD PREFER THAT SOME MEANS BE FOUND TO PERMIT THE ALLIES TO ALLOW EVEN THE USE OF GSG-9 SHOULD THAT PROVE NECESSARY AND THAT SUCH BGS PERSONNEL SHOULD BE SENT TO BERLIN IN SUCH A WAY AS NOT TO VIOLATE THE DEMILITARIZED STATUS OF THE CITY. ACTION REQUESTED: SEE PARAGRAPH 18. END SUMMARY

1. THE ALLIED BONN GROUP REPS DISCUSSED THE SUBJECT TRIPARTITELY ON MARCH 29. THE FRENCH REP (RICHARD) CONFIDENTIAL

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NOTED THAT AFTER THE LAST TRIPARTITE DISCUSSION (REF B), THE ALLIED MISSIONS IN BERLIN HAD BEEN ASKED TO STUDY THREE QUESTIONS (PARAGRAPH 1 OF REF B). THEY HAD DONE SO AND THE FRENCH UNDERSTOOD THE GENERAL CONCLUSIONS REACHED IN BERLIN ON THE QUESTIONS ARE AS FOLLOWS:

A) PROTECTION FOR PROMINENT PERSONALITIES
(ESPECIALLY IN CONNECTION WITH LORENZ TRIAL).

SINCE BODYGUARD PROTECTION IS ALREADY PROVIDED BY BUNDESGRENZSCHUTZ (BGS) PERSONNEL DETACHED FROM THE BGS AND ATTACHED TO THE BUNDESKRIMINALAMT (BKA) FOR EXTENDED PERIODS OF TIME (REF C), AND SINCE THIS HAS BEEN DONE FOR A LONG TIME, THERE SEEMS TO BE NO NEED TO SEEK TO ALTER THIS PRACTICE.

B) RADIO SIGNAL TRACING

SINCE THERE APPEARS TO BE NO LOCAL CAPABILITY TO MEET ANY NEED IN THIS REGARD (REF A), ANY REQUIREMENTS FOR SUCH EQUIPMENT AND NECESSARY PERSONNEL WOULD HAVE TO BE MET BY THE BGS (AS IN THE LORENZ CASE). IF THE

GERMANS WANT THIS, THE ALLIES WOULD NEED TO BE INFORMED

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IN ADVANCE AND AUTHORIZE THE USE OF BGS PERSONNEL.

C) RETAKING A HIJACKED AIRCRAFT IN BERLIN

THE FRENCH HAVE BEEN INFORMED IN BERLIN THAT THE
US AND UK WOULD BE PREPARED TO SEND IN US AND UK GROUPS
TO DO WHAT THE BGS IS ABLE TO DO. (COMMENT: THE UK
REP (EYERS) LATER SAID THAT THIS IS NOT CORRECT IN THE
CASE OF THE UK. EYERS SAID HE HAD ASKED LONDON WHETHER
THE UK WOULD BE PREPARED TO PROVIDE A UK GROUP BUT HAS
HAD NO REPLY AS YET. END COMMENT) RICHARD SAID THAT
THE FRENCH ARE WILLING TO SEND AN ANTI-TERRORIST STRIKE
FORCE, ESPECIALLY IF AN AIRCRAFT IS COMPELLED BY
HIJACKERS TO LAND AT TEGEL IN THE FRENCH SECTOR. IN
ADDITION, THE BERLIN AUTHORITIES HAVE THE SPEZIAL-
EINSATZ-KOMMANDO (SEK, DESCRIBED IN REFTELS A AND C)
BUT THE SEK MIGHT NEED ADVICE FROM GSG-9 ADVISERS. THE
GERMANS WOULD NEED ALLIED AUTHORIZATION FOR ANY BGS
PERSONNEL TO GO TO BERLIN.

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2. RICHARD SAID THAT THE VIEW OF THE FRENCH IN BONN AND BERLIN (THE QUESTION WILL NOW BE PUT TO PARIS) IS THAT IF THE GERMANS MAINTAIN ONLY GSG-9 CAN DO THE JOB, THE POSSIBILITY OF AN AFFIRMATIVE RESPONSE TO A GERMAN REQUEST TO ALLOW GSG-9 TO GO TO BERLIN SHOULD NOT BE EXCLUDED.

3. SPEAKING OF THE POSSIBILITY OF URBAN TERRORISM (E.G. THE TAKEOVER OF A BUILDING WITH A LARGE NUMBER OF HOSTAGES), RICHARD SAID THE APPROPRIATE SECTOR COMMANDANT WOULD PRESUMABLY INTERVENE AND IN SOME CASES A DIRECT ALLIED ROLE MIGHT BE REQUIRED FOR REASONS OF SECURITY AND STATUS. HE GAVE NO FURTHER DETAILS OF THE MISSIONS' VIEWS ON THIS SUBJECT.

4. WITH RESPECT TO THE USE OF BGS PERSONNEL FOR BODY-GUARD SERVICES, THE US REP SAID THAT THIS APPEARED TO BE A NON-PROBLEM AT THE MOMENT. WE HAVE HEARD NO INDICATIONS THAT THE GERMANS PLAN TO REQUEST PERMISSION FOR THE BGS PERSONNEL TO GO TO BERLIN FOR PURPOSES OF PROVIDING PERSONAL SECURITY EXCEPT UNDER THE CONDITIONS ALREADY LAID DOWN. IF THE FRG SOUGHT TO ALTER THIS PRACTICE, THE OBVIOUS QUESTION WOULD HAVE TO BE ASKED WHY THE CAPABILITIES IN BERLIN (INCLUDING BGS PERSONNEL DETAILED TO THE BKA) WERE NOT SUFFICIENT. EYERS COMMENTED THAT HE UNDERSTOOD THAT THE BGS PERSONNEL IN BERLIN HAD BEEN "SENT PACKING" AT THE END OF 1977. THE US REP AND RICHARD SAID THAT THIS WAS APPARENTLY NOT THE CASE AND THE US REP CITED THE INFORMATION IN REFS A AND C.

5. REGARDING THE QUESTION OF THE DEMILITARIZED STATUS OF BERLIN AND THE INCONSISTENCY OF THE PRESENCE OF BGS
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PERSONNEL WITH THIS STATUS, THE US REP NOTED THAT THE FRG HAD BEEN INFORMED IN 1975 (REF D) THAT THE BGS PERSONNEL THERE WOULD HAVE TO BE WITHDRAWN, EVEN THOUGH THEY HAD BEEN SECONDED TO THE BKA, BECAUSE THE "BGS IS RECOGNIZED TO BE A PARA-MILITARY BODY AND THE PRESENCE OF ITS MEMBERS IN BERLIN ON DUTY IS INCONSISTENT WITH ALLIED LEGISLATION IN FORCE THERE WHICH ESTABLISHED AND MAINTAINS THE DEMILITARIZED STATUS OF THE CITY."

6. HE NOTED THAT THE BGS WAS REORGANIZED SOME

YEARS AGO AND WAS ASSIMILATED TO A POLICE FORCE.
(COMMENT: THE MAJOR PART OF THE REORGANIZATION
TOOK PLACE IN 1972 AND 1975 AND THE FRG VIEW IS THAT THIS IS A
POLICE, NOT MILITARY OR PARA-MILITARY, FORCE. END
COMMENT) HE OBSERVED THAT THE ALLIES ALREADY
ACCEPT THE PRESENCE OF SOME BGS PERSONNEL IN BERLIN (ON LONG-TERM
SECONDMENT TO THE BKA) AND ASKED RHETORICALLY WHETHER,
IN EFFECT, WE HAD DE FACTO CONCLUDED THAT THE PRESENCE
OF THE BGS IN BERLIN WAS NOT INCONSISTENT
WITH THE DEMILITARIZED STATUS OF THE CITY NOTWITHSTAND-
ING THE FACT THAT THE LAW ON THE BGS HAD NOT BEEN TAKEN
OVER IN BERLIN. HE SAID A REVIEW OF THE QUESTION BY
THE LEGAL ADVISERS IN BERLIN MIGHT BE USEFUL.

7. EYERS SAID THAT THE FCO'S VERY STRONG VIEW WAS
THAT THE PRESENCE OF THE BGS IN BERLIN WOULD BE INCON-
SISTENT WITH THE DEMILITARIZED STATUS OF THE CITY. HE
THEN PROVIDED US WITH THE FOLLOWING TEXT WHICH REFLECTS
THE FCO'S INSTRUCTIONS AND IS IN THE FORM OF A LETTER

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FROM THE FCO TO UK EMBASSY BONN. THE BRACKETS IN THE
DRAFT SPEAKING NOTE (PARAGRAPH 8, INFRA), ENCLOSED WITH
THE INSTRUCTIONS, ARE FOR THE PURPOSE OF SHOWING THAT
THE EVENT OR CONDITION SHOWN IS ONLY AN EXAMPLE.

BEGIN TEXT

A. I UNDERSTAND THAT THE SENAT HAVE CONTEMPLATED THE USE OF BUNDESGRENZSCHUETZ IN BERLIN IN TWO CONTEXTS:

(A) FOR A MASSIVE ASSAULT FOR THE RELEASE OF HOSTAGES (CF MOGADISHU);

(B) SMALL GROUPS WITH SPECIAL EXPERTISE.

B. LONDON WOULD BE UNWILLING TO CONTEMPLATE THE USE OF THE GSG9 FORCE WHOLESAL IN A BERLIN TERRORIST EMERGENCY. WE DO NOT SEE HOW THE ALLIES COULD POSSIBLY INDULGE IN SUCH A FLAGRANT BREACH OF THE DEMILITARISED STATUS OF BERLIN. IF FOR ANY REASON IT SHOULD BE THOUGHT
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NECESSARY TO USE THIS FORCE IN BERLIN ON A LARGE SCALE IN LONDON'S VIEW THE CONSENT OF THE RUSSIANS WOULD BE INDISPENSABLE. THE IDEA OF SEEKING CONSENT OBVIOUSLY BRISTLES WITH DIFFICULTIES; EVEN IF THE ALLIES WERE PREPARED TO TRY IT THE GERMANS MIGHT WELL GIB AT THE IDEA OF CONSULTING THE RUSSIANS ON A QUESTION OF THIS KIND. BUT THE IDEA MIGHT BE WORTH KEEPING IN THE BACK OF ONE'S MIND. EVEN IF THE RUSSIANS WERE TO REFUSE NOTHING WOULD HAVE BEEN LOST AND FROM A PRESENTATIONAL POINT OF VIEW SOMETHING MIGHT HAVE BEEN GAINED.

C. AS FOR THE USE OF EXPERTS THERE ARE SEVERAL CONTINGENCIES IN WHICH THE SENAT MIGHT WISH TO CALL ON THE HELP OF THE BUNDESGRENZSCHUETZ. THEY HAVE MENTIONED TECHNICAL ADVICE IN SUPPORT OF THE SEK IF THERE WERE TO BE A NEED FOR A MOGADISHUTYPE ASSAULT; AND SPECIALISTS TO DETECT AND LOCATE ILLEGAL TRANSMITTERS.

D. LONDON ARE CONSIDERING WHETHER IT WOULD BE POSSIBLE FOR THE UK TO PROVIDE THIS SORT OF HELP FROM OUR RESOURCES (WHICH OF COURSE WERE USED AT MOGADISHU WITH GREAT SUCCESS). ON FIRST EXAMINATION LONDON ARE PREPARED TO CONTEMPLATE THE USE OF BGS SPECIALISTS WHERE THE TECHNIQUES WHICH THEY DEPLOY ARE NOT OBTAINABLE FROM ALLIED SOURCES. THEY CONSIDER IT IMPORTANT THAT WE TURN A BLIND EYE TO THE DEPLOYMENT OF THE BGS RATHER THAN SOLICITING IT AND ABOVE ALL THAT NO PIECE OF PAPER IS ISSUED WHICH IF LEAKED WOULD PROVE THAT THE ALLIES HAD BEEN CONSCIOUS ACCOMPLICES IN THE INTRODUCTION OF BGS PERSONNEL TO BERLIN. THEY SUGGEST THAT THIS COULD BE DONE BY MAKING AN APPROACH TO THE FEDERAL AUTHORITIES ON THE LINES SUGGESTED IN 1975 BUT WITH CERTAIN IMPORTANT AMENDMENTS: NOTABLY ALL DIRECT

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REFERENCE TO THE BGS WOULD BE OMITTED, THOUGH IT COULD EASILY BE MADE CLEAR TO THE FEDERAL AUTHORITIES INFORMALLY AND ORALLY THAT THOSE CONCERNED MIGHT BE DRAWN FROM THE BGS. THE PAPER WOULD LOOK LIKE THAT ATTACHED.

E. PROVIDED THAT SUITABLE PRECAUTIONS WERE TAKEN THE RISK OF THE PRESENCE OF A FEW BGS EXPERTS IN BERLIN LEAKING WOULD BE RELATIVELY SLIGHT SINCE THEY WOULD BE INDISTINGUISHABLE IN LANGUAGE AND DRESS FROM BERLINERS AND COULD ARRIVE IN BERLIN QUICKLY WITHOUT ATTRACTING ATTENTION. IN LONDON'S VIEW THE CHANCES ARE IN ANY CASE THAT THE RUSSIANS, EVEN IF THEY HAD A GOOD IDEA THAT BGS PERSONNEL WERE INVOLVED IN A MAJOR COUNTER-TERRORIST OPERATION IN BERLIN, WOULD NOT MAKE A FUSS UNLESS FORCED TO DO SO BY OPEN ADMISSION OF THE FACT BY THE ALLIES OR THE SENAT. WHETHER THE OPERATION SUCCEEDED OR FAILED THE RUSSIANS WOULD SHOW THEMSELVES TO POOR ADVANTAGE IF THEY SOUGHT TO MAKE POLITICAL CAPITAL AT A TIME OF NATIONAL JUBILATION OR NATIONAL MOURNING IN THE FRG OUT OF THE BEST EFFORTS OF THE ALLIES AND OF THE FRG AUTHORITIES TO COPE WITH A TERRORIST EMERGENCY. IT WOULD OF COURSE BE A COROLLARY OF THIS APPROACH THAT THE FEDERAL AUTHORITIES AND SENAT AGREED TO AVOID ALL PUBLICITY FOR THE USE OF THE BGS.

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END TEXT

8. THE TEXT OF THE UK DRAFT TALKING POINTS IS SET OUT BELOW. THE DEPARTMENT WILL NOTE THAT THIS IS VIRTUALLY THE SAME TEXT AS THAT APPROVED IN 1975 (WITHOUT THE BRITISH RESERVATION ON THE PHRASE "THE CONTROL OF THE ALLIED AUTHORITIES UNDER," A RESERVATION WHICH THE DEPARTMENT STRONGLY RESISTED), WITH THE ONLY SIGNIFICANT CHANGES BEING THE DELETION OF THE TERM "BGS" WHERE IT APPEARS. THIS IS PRESUMABLY IN ACCORD WITH THE BRITISH "BLIND EYE" CONCEPT. THE TEXT OF THE DRAFT TALKING POINTS IS:

BEGIN TEXT

IN THE LIGHT OF THE SPECIAL CIRCUMSTANCES
CONNECTED WITH (EVENT) THE ALLIES HAVE CONCLUDED THAT THERE
EXISTS IN BERLIN A NEED FOR PARTICULAR TECHNICAL
EXPERTISE IN THE FIELD OF BEGIN BRACKET RADIO COMMUNICA-
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TION AND DIRECTION FINDING END BRACKET. THE THREE
POWERS, ACTING ON THE BASIS OF THEIR RESPONSIBILITY FOR
THE SECURITY OF BERLIN, THEREFORE INVITE THE FEDERAL
GOVERNMENT TO MAKE TECHNICAL EXPERTS AVAILABLE IN BERLIN
ON THE FOLLOWING CONDITIONS:

THEY SHOULD BE DETACHED FROM FEDERAL SERVICE BEFORE
GOING TO BERLIN AND WHILE IN BERLIN BE ATTACHED TO
THE BERLIN POLICE IN AN EXPERT ADVISORY CAPACITY,
BE UNDER THE COMMAND OF THE BERLIN POLICE AND NOT
OF ANY FEDERAL AUTHORITY, AND BE SUBJECT TO THE
CONTROL OF THE ALLIED AUTHORITIES UNDER THE PROVI-
SIONS OF BK/O(58)3.

IT IS UNDERSTOOD THAT THE NUMBER OF EXPERTS
REQUIRED WILL NOT EXCEED BEGIN BRACKET 10 END
BRACKET, THAT THEIR SERVICES WILL NOT BE REQUIRED
IN BERLIN FOR MORE THAN APPROXIMATELY BEGIN BRACKET
3 WEEKS END BRACKET, AND THAT THEY WILL WEAR NO
UNIFORM BEGIN BRACKET OTHER THAN THAT OF THE

BERLIN POLICE END BRACKET WHILE IN BERLIN.

END TEXT

9. THE US REP ASKED, WITH RESPECT TO THE LEGAL QUESTION, APART FROM THE POLITICAL ONE, HOW ALLOWING THE BGS IN BERLIN COULD BE CONSISTENT WITH LONDON'S VIEW THAT SUCH PRESENCE THERE WOULD BE A VIOLATION OF THE DEMILITARIZED STATUS. EYERS SAID THAT PERSONNEL WOULD BE SECONDED TO THE BERLIN POLICE AND THAT THIS SECONDMENT TRANSFIGURED THEIR STATUS FROM THAT OF PARAMILITARY TO POLICE. HE SAID, IN RESPONSE TO A FURTHER QUESTION, THAT THE FCO'S VIEW (ON THE LEGAL POINT) WOULD PRESUMABLY BE THE SAME
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IF THE FRG WISHED TO SECOND MEMBERS OF THE BUNDESWEHR TO THE POLICE. THE US REP THEN ASKED ABOUT THE LEGAL DIFFERENCE BETWEEN SECONDING A FEW ADVISERS TO THE BERLIN POLICE AND DOING THE SAME WITH GSG-9 WHOLESAL, SUGGESTING THAT THIS SOUNDS SOMEWHAT LIKE "A LITTLE BIT PREGNANT." EYERS RESPONDED THAT IT WOULD BE TRANSPARENT TO ARGUE THAT A LARGE GROUP OF GSG-9 PERSONNEL WERE SECONDED TO, AND SUBJECT TO, THE BERLIN POLICE WHILE A CREDIBLE CASE CAN BE MADE FOR A SMALL NUMBER OF ADVISERS BEING SO SECONDED. EYERS AGREED THAT THE FORMAL REQUIREMENT OF SECONDMENT WOULD, IN AN EMERGENCY, PROBABLY NOT BE COMPLETED PRIOR TO THE FACT BUT SUGGESTED THAT THE PAPERWORK WOULD BE COMPLETED ON A POST FACTO BASIS. IN A DISCUSSION OF THE EFFECT OF SUCH SECONDMENT, RICHARD ADDED THAT, IN WARTIME, MILITARY PERSONNEL OF ONE NATION, WHEN ATTACHED TO ANOTHER NATION'S FORCES ARE SOMETIMES CONSIDERED TO BE PART OF THE LATTER.

10. THE US REP SAID THE UK PROPOSAL APPEARS REASONABLE AS FAR AS IT GOES. HE ASKED WHETHER THE FCO WOULD MAINTAIN ITS POSITION THAT SOVIET CONSENT WAS NECESSARY FOR THE USE OF GSG-9 IF AN EMERGENCY EXISTED AND IF THE EXPERTS IN THE FIELD CONCLUDED THAT THAT ORGANIZATION UNDER THE PARTICULAR CIRCUMSTANCES OF THE MOMENT WAS THE MOST APPROPRIATE ORGANIZATION TO CARRY OUT THE OPERATION. EYERS SAID THAT THE STATEMENT THAT "LONDON WOULD BE UNWILLING" TO CONSIDER THE USE OF GSG-9 WAS QUALIFIED BY THE BALANCE OF PARAGRAPH 7 (B) SUPRA BUT SUGGESTED THAT HIGH-LEVEL FRG INTERVENTION WITH HMG WOULD BE NECESSARY. WE AGREED WITH HIS STATEMENT THAT THE

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PROBLEM IS A HYPOTHETICAL ONE AT THE MOMENT.

11. IT WAS AGREED TO RECOMMEND TO CAPITALS THAT THE APPROACH SUGGESTED BY THE FCO BE APPROVED. THE US REP RESERVED HIS POSITION ON EYERS' SUGGESTION THAT THE FRG BE INFORMED OF THIS POSITION AS SOON AS ALL CAPITALS HAD APPROVED THE APPROACH AND SAID HIS AD REF AGREEMENT ON THE APPROACH DID NOT SIGNIFY FULL ACCEPTANCE OF THE FCO'S LEGAL POSITION.

12. COMMENT: WE BELIEVE THAT THE FOREGOING REPRESENTS A WORKABLE SOLUTION TO THE PROBLEM OF WHAT TO DO ABOUT A GERMAN REQUEST, IN AN EMERGENCY, FOR THE LIMITED USE OF BGS PERSONNEL IN BERLIN. IT IS CONSISTENT WITH THE APPROACH APPROVED BY THE US AND UK IN 1975. THE DEPARTMENT WILL RECALL THAT THE FRENCH BONN GROUP REP WAS INSTRUCTED TO REFER THE QUESTION TO PARIS IF THE GERMANS MADE A FORMAL REQUEST, WHICH THEY APPARENTLY DID NOT (REFS G AND H). THE APPROACH WOULD NOT, IN OUR VIEW, BE INCONSISTENT WITH THE STATUS OF BERLIN AS A
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DEMILITARIZED CITY OR INVOLVE AN EXERCISE OF DIRECT FRG STATE AUTHORITY OVER BERLIN. IT ALSO APPEARS TO BE GENERALLY CONSISTENT WITH USBER'S RECOMMENDATION

(PARAGRAPH 8 OF REF A). AT PRESENT, IT APPEARS TO BE
AS FAR AS THE BRITISH ARE PREPARED TO GO.

13. WHILE WE RECOMMEND THE FOREGOING AS A PRAGMATIC
SOLUTION TO WHAT COULD BE AN URGENT PROBLEM AT ANY
TIME, WE DO NOT FIND THE BRITISH EXPOSITION OF THE UK
LEGAL POSITION TOTALLY CONVINCING. THAT POSITION IS
ESSENTIALLY AS FOLLOWS:

A) THE BGS IS A PARAMILITARY ORGANIZATION AND ITS
PERSONNEL CANNOT BE PRESENT IN THEIR BGS CAPACITY IN
BERLIN.

B) THE DETACHMENT OF PERSONNEL FROM THE BGS AND
ATTACHMENT TO THE BERLIN POLICE TRANSFIGURES THIS PARA -
MILITARY STATUS, MAKES THEM NON-MILITARY AND THEREFORE
PERMITS THEM TO BE IN BERLIN.

C) HOWEVER, THIS TRANSFORMATION, IF
APPLIED TO A LARGE NUMBER OF PERSONNEL (E.G. GSG-9
WHOLESALE), WOULD BE UNSUCCESSFUL AND THEY WOULD STILL
BE PARAMILITARY PERSONNEL. THE LOGIC OF THIS IS APPARENTLY
THAT ONE CANNOT "CREDIBLY" ARGUE THAT A LARGE NUMBER OF
PERSONNEL, WHEN DETACHED FROM THE BGS AND ATTACHED TO
THE POLICE, ARE IN FACT PART OF THE POLICE. THEY
RETAIN THEIR PARAMILITARY STATUS PRESUMABLY BECAUSE THERE
ARE TOO MANY OF THEM TO BE EFFECTIVELY UNDER THE CONTROL
OF THE POLICE.

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14. ACCEPTANCE OF THE UK PROPOSAL STILL LEAVES OPEN THE QUESTION OF WHAT THE ALLIES WOULD CONSIDER THEMSELVES LEGALLY ENTITLED TO DO IN THE TYPE OF EMERGENCY WHERE THERE MIGHT BE GREAT FRG PRESSURE FOR THE USE OF GSG-9 (E.G. A LUFTHANSA AIRCRAFT FORCED BY HIJACKERS TO LAND IN WEST BERLIN, A GERMAN SCHOOL SEIZED WITH MANY HOSTAGES) AND WHERE OUR OWN EXPERTS IN THE FIELD MIGHT CONCLUDE THAT THE GSG-9 WAS THE BEST UNIT TO CARRY OUT A RESCUE OPERATION. THE FCO POSITION WOULD EXCLUDE THIS POSSIBILITY WITHOUT SOVIET AGREEMENT AND, IN THE ABSENCE OF SUCH AGREEMENT, WOULD CONSIDER THE INTERVENTION OF GSG-9 A VIOLATION OF THE DEMILITARIZED STATUS OF THE CITY. TO ASK SOVIET PERMISSION WOULD ONLY BUTTRESS THEIR CLAIM TO A RIGHT OF CO-DETERMINATION IN WEST BERLIN. ON THE OTHER HAND, IN VIEW OF THE COMMITMENTS REGARDING DEMILITARIZATION GIVEN TO THE SOVIETS IN CONNECTION WITH THE QA NEGOTIATIONS, WE WOULD PREFER NOT TO ENGAGE IN A PRACTICE WE REGARDED AS A VIOLATION OF THE DEMILITARIZED STATUS OF THE CITY. ALTHOUGH WE
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ARE NOT PRESSING FOR THE GSG-9 TO BE EMPLOYED IN AN EMERGENCY, WE BELIEVE THAT THIS OPTION SHOULD NOT BE FORECLOSED IN ADVANCE BY LEGAL RESERVATIONS.

15. THE FCO LEGAL THEORY IS LESS THAN FULLY CLEAR IN THE WAY IT IS PRESENTED AND, IN OUR VIEW, THE DISTINCTIONS IT MAKES ARE SOMEWHAT DUBIOUS. IT APPEARS TO ADMIT THAT SMALL NUMBERS OF BGS PERSONNEL CAN LEGALLY BE IN BERLIN UNDER THE CONDITIONS LAID DOWN IN PARAGRAPH 8 SUPRA BUT CALLS THE WHOLESALE USE OF GSG-9 A "FLAGRANT BREACH" OF THE DEMILITARIZED STATUS OF BERLIN. THE FCO'S DISTINCTION, ALTHOUGH NOT CLEARLY SET OUT, APPEARS TO TURN ON THE QUESTION OF CONTROL AND COMMAND, I.E. SOME FORM OF "BORROWED SERVANT" DOCTRINE: THERE ARE TOO MANY GSG-9 PERSONNEL IN A FULL UNIT TO BE UNDER THE EFFECTIVE CONTROL OF THE POLICE.

16. WE HAVE NO RECORD OF THIS PROBLEM HAVING BEEN FORMALLY CONSIDERED BY THE LEGAL COMMITTEE IN THE RECENT PAST AND IF IT HAS, WE WOULD APPRECIATE BEING INFORMED. IF IT HAS NOT, PERHAPS SUCH A STUDY WOULD BE USEFUL WITH A THOROUGHLY THOUGHT-OUT LEGAL RATIONALE FOR THE PRESENCE OF BGS PERSONNEL THERE, IN THE WAY WE ALREADY PERMIT IT, AND CONSIDERATION OF A MEANS WHICH WOULD PERMIT THE USE OF GSG-9 SHOULD THAT BE NECESSARY. THERE ARE OF COURSE MANY FACETS TO THE PROBLEM BUT THE FOLLOWING OCCUR TO US:

A) IS THE BGS A PARAMILITARY UNIT OR CAN IT BE CONSIDERED A POLICE UNIT, AS THE GERMANS CLAIM?

B) EVEN IF THE BGS IS A PARAMILITARY UNIT AND EVEN IF THE UK THEORY AS TO SIZE MAKING A DIFFERENCE IS CONFIDENTIAL

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ACCEPTED, ARE THERE OTHER AUSPICES UNDER WHICH BGS PERSONNEL COULD LEGALLY OPERATE IN BERLIN? FOR EXAMPLE, WOULD IT MAKE A DIFFERENCE IF THEY WERE PLACED UNDER THE PERSONAL COMMAND AND CONTROL OF THE ALLIED COMMANDANTS? IF IT WOULD, CAN THE FRG LEGALLY DO THIS AND CAN THE COMMANDANTS ASSUME SUCH CONTROL AND COMMAND?

17. WITH RESPECT TO THE UK SUGGESTION PROMPTLY TO INFORM THE FRG IF CAPITALS APPROVE THE PROPOSED SCENARIO, WE WOULD PREFER THAT THIS BE THE SUBJECT OF

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ACTION EUR-08

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FURTHER DISCUSSION WITH THE BRITISH AND FRENCH. THERE
WOULD BE SOME ADVANTAGE IN HAVING AN AGREED
(WITH THE FRG) SCENARIO AS TO HOW AND UNDER WHAT
CONDITIONS THE BGS WOULD BE PERMITTED TO COME TO
BERLIN OTHER THAN ON LONG-TERM SECONDMENT. HOWEVER, WE
ARE NOT RESPONDING TO AN FRG REQUEST, SO THERE IS NO
IMMEDIATE NEED TO DO SO, AND TO INFORM THE FRG OF THIS
DECISION MIGHT PROVOKE A DISCUSSION WITH THE FRG AS
TO WHY WE WOULD NOT BE PREPARED TO ALLOW BROADER USE OF
THE BGS (E.G. GSG-9) OR TO ALLOW CERTAIN LAWS REGARDING
THE BGS TO BE TAKEN OVER IN BERLIN.

18. ACTION REQUESTED:

A) FOR DEPARTMENT: AUTHORIZATION TO INFORM THE
BRITISH AND FRENCH THAT WE AGREE TO THE TEXT IN
PARAGRAPH 8 SUPRA AND THE OVERALL SCENARIO BUT THAT WE
WISH TO CONSIDER FURTHER THE TIME OF THE APPROACH TO
THE FRG AND WITH THE RESERVATION THAT WE DO NOT FULLY
ACCEPT THE FCO'S LEGAL POSITION.

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B) FOR USBER: USBER'S VIEWS ON THE UTILITY AND
FEASIBILITY OF A LEGAL STUDY OF THE TYPE ENVISAGED
ABOVE.
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